

SENATE CONCURRENT RESOLUTION No. 87

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MARCH 6, 2008

Sponsored by:

Senator GERALD CARDINALE

District 39 (Bergen)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

Co-Sponsored by:

Senators Haines and T.Kean

SYNOPSIS

Proposes constitutional amendment to restore the death penalty under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 **A CONCURRENT RESOLUTION** proposing to amend Article I,
2 paragraph 12 and Article VI, Section II of the Constitution of the
3 State of New Jersey concerning the death penalty and
4 designating the amendment as the “Respect for the Majority of
5 New Jersey Voters Amendment.”

6
7 **BE IT RESOLVED** *by the Senate of the State of New Jersey (the*
8 *General Assembly concurring):*

9
10 1. The following proposed amendment to the Constitution of
11 the State of New Jersey is hereby agreed to:

12
13 **PROPOSED AMENDMENT**

14
15 a. Amend Article I, paragraph 12 to read as follows:

16 12. Excessive bail shall not be required, excessive fines shall not
17 be imposed, and cruel and unusual punishments shall not be
18 inflicted. The Legislature shall by law provide for the imposition of
19 the death penalty on persons convicted of certain murders. Such
20 law shall provide that a person shall be sentenced to death only if
21 the jury or, if there is no jury, the court, finds that all of the
22 aggravating factors of the case outweigh with no doubt all of the
23 mitigating factors. Such law shall provide that if any juror or the
24 court has a residual or lingering doubt the defendant shall not be
25 sentenced to death.

26 It shall not be cruel and unusual punishment to impose the death
27 penalty on a person convicted of purposely or knowingly causing
28 death or purposely or knowingly causing serious bodily injury
29 resulting in death who committed the homicidal act by his own
30 conduct or who as an accomplice procured the commission of the
31 offense by payment or promise of payment of anything of pecuniary
32 value.

33 (cf: Art. I, par.12; amended eff. December 3, 1992)

34
35 b. Amend Article VI, Section II by adding a new paragraph 4
36 to read as follows:

37 4. a. In all cases in which a sentence of death is imposed, the
38 appeal to the Supreme Court of New Jersey and any proportionality
39 review shall be decided and an opinion reaching the merits shall be
40 filed within 150 days of the certification of the entire record by the
41 sentencing court.

42 b. In all cases in which a sentence of death is imposed and the
43 Supreme Court of New Jersey affirms the defendant’s conviction
44 and sentence, no application for post-conviction relief may be filed
45 in the courts of this State after one year from the date of the denial

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

 Matter underlined thus is new matter.

1 of certiorari or other final action by the United States Supreme
2 Court in respect of defendant’s direct appeal. The provisions of this
3 paragraph shall not apply to a motion for a new trial on the grounds
4 that the defendant is innocent of the crime for which he was
5 convicted and sentenced to death.

6 c. A failure to comply with the time requirements of this
7 paragraph shall not be grounds for precluding the ultimate
8 imposition of the death penalty.

9
10 2. When this proposed amendment to the Constitution is finally
11 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
12 shall be submitted to the people at the next general election
13 occurring more than three months after the final agreement and
14 shall be published at least once in at least one newspaper of each
15 county designated by the President of the Senate, the Speaker of the
16 General Assembly and the Secretary of State, not less than three
17 months prior to the general election.

18
19 3. This proposed amendment to the Constitution shall be
20 submitted to the people at that election in the following manner and
21 form:

22 There shall be printed on each official ballot to be used at the
23 general election, the following:

24 a. In every municipality in which voting machines are not used,
25 a legend which shall immediately precede the question as follows:

26 If you favor the proposition printed below make a cross (X), plus
27 (+), or check (✓) in the square opposite the word "Yes." If you are
28 opposed thereto make a cross (X), plus (+) or check (✓) in the
29 square opposite the word "No."

30 b. In every municipality the following question:

31

		<p>RESTORATION OF THE DEATH PENALTY</p> <p>Shall the proposed amendment to Article I and Article VI of the Constitution, agreed to by the Legislature, providing for the imposition of the death penalty on persons convicted of certain murders; providing that a person shall be sentenced to death only if the jury or the court finds that all of the aggravating factors of the case outweigh with no doubt all of the mitigating factors; providing that if any juror or the court has a residual or lingering doubt the defendant shall not be sentenced to death; and establishing time limits for appeals in State court in death penalty cases, be approved?</p>
	YES	

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		<p>INTERPRETIVE STATEMENT</p> <p>This constitutional amendment would restore the death penalty, which was abolished on December 17, 2007 by the enactment of P.L.2007, c.204.</p> <p>The amendment requires the Legislature to provide by law for the imposition of the death penalty on persons convicted of certain murders.</p> <p>The law would heighten the burden of proof as a safeguard against the possibility that an innocent person might receive the death penalty. Under the law, a person would be sentenced to death only if the jury or, if there is no jury, the court, finds that all of the aggravating factors of the case outweigh <i>with no doubt</i> all of the mitigating factors. The law would also provide that if any juror or the court has a residual or lingering doubt the defendant shall not be sentenced to death. Under the prior death penalty statute, a defendant could be sentenced to death upon the lesser finding of <i>beyond a reasonable doubt</i>. The amendment also establishes deadlines to shorten the time period for death penalty appeals. Under the amendment, in all cases in which a sentence of death is imposed, the appeal to the Supreme Court of New Jersey and any proportionality review shall be decided and an opinion reaching the merits shall be filed within 150 days of the certification of the entire record by the sentencing court. A proportionality review is a review to determine whether a defendant's sentence is disproportionate to the sentences of other defendants convicted of factually similar crimes. The amendment also provides that if the Supreme Court of New Jersey affirms the defendant's conviction and death sentence, no application for post-conviction relief may be filed in State court after one year from the date when the Supreme Court of the United States refuses to hear the case or takes other final action. Failure to comply with the time requirements, however, would not be grounds for precluding the ultimate imposition of the death penalty. The amendment would not prohibit or otherwise limit a defendant from applying for a new trial on the grounds that he is innocent.</p>
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1 SCHEDULE

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3 This constitutional amendment shall only apply to persons
4 convicted and sentenced for crimes committed on or after noon on
5 the first day of January next following approval.
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8 STATEMENT

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10 This constitutional amendment would restore the death penalty,
11 which was abolished on December 17, 2007 by the enactment of
12 P.L.2007, c.204.

13 The amendment provides that the Legislature shall by law
14 provide for the imposition of the death penalty on persons convicted
15 of certain murders.

16 The law would heighten the burden of proof as a safeguard
17 against the possibility that an innocent person might receive the
18 death penalty. Under the law, a person would be sentenced to death
19 only if the jury or, if there is no jury, the court, finds that all of the
20 aggravating factors of the case outweigh *with no doubt* all of the
21 mitigating factors. The law would also provide that if any juror or
22 the court has a residual or lingering doubt the defendant shall not be
23 sentenced to death. Under the prior death penalty statute, a
24 defendant could be sentenced to death upon the lesser finding of
25 “*beyond a reasonable doubt.*”

26 The amendment also establishes deadlines to shorten the time
27 period for death penalty appeals. Under the amendment, in all cases
28 in which a sentence of death is imposed the appeal to the Supreme
29 Court of New Jersey and any proportionality review shall be
30 decided and an opinion reaching the merits filed within 150 days of
31 the certification of the entire record by the sentencing court. A
32 proportionality review is a review to determine whether a
33 defendant’s sentence is disproportionate to the sentences of other
34 defendants convicted of factually similar crimes.

35 The amendment also provides that in all cases in which a
36 sentence of death is imposed and the New Jersey Supreme Court
37 affirms the defendant’s conviction and sentence, no application for
38 post-conviction relief may be filed in the courts of this State after
39 one year from the date of the denial of certiorari or other final
40 action by the United States Supreme Court in respect of defendant’s
41 direct appeal. However, the amendment would not prohibit a
42 defendant from applying for a new trial on the grounds that he is
43 innocent of the crime for which he was convicted.

44 The amendment also includes a provision stating that a failure to
45 comply with the time requirements shall not be grounds for
46 precluding the ultimate imposition of the death penalty.

47 If approved, the amendment would apply only to persons
48 convicted and sentenced for crimes committed on or after noon on

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1 the first day of January next following approval of the amendment
2 by the voters.

3 The sponsor is naming the proposed amendment the “Respect for
4 the Majority of New Jersey Voters Amendment” in recognition of
5 the fact that opinion polls consistently show that the majority of
6 New Jersey voters support the death penalty and opposed its
7 December 2007 abolition. In fact, according to a December 11,
8 2007 Quinnipiac poll, 78% of New Jersey voters support the
9 retention of the death penalty for the "most violent cases.” Only
10 18% agree with the legislation enacted in December of 2007 which
11 eliminated the death penalty for all offenses, including those "most
12 violent cases.”